

In re application of: WEINBERG, Mark J.

Serial No.: 10/623,428

Page 9

Please amend the drawings as follows:

Add Figure 1 to the drawings. A formal drawing sheet of Figure 1 is enclosed.

REMARKS

The Examiner's objection to the Abstract is respectfully traversed. Applicants have corrected the Abstract in accordance with the Examiner's request deleting the phraseology "comprising."

The Examiner's objection to the disclosure because of Figure 1 being placed within the body of the specification is respectfully traversed. Applicants have cancelled Figure 1 on page 35 of the instant specification. Applicants are filing herewith a separate formal drawing to properly include Figure 1 as part of the disclosure.

The Examiner's objection to claims 38 and 39 due to the informalities of having an extraneous period after "structure" in line 19 and, in claim 39, there is a comma at the end of the claim is respectfully traversed. Applicants have cancelled claim 38 without prejudice and have amended claim 39 to put a period at the end of the claim instead of a comma.

The Examiner's rejection of claim 29 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicants regard as the invention is respectfully traversed. Applicants have cancelled claim 29 without prejudice.

The Examiner's rejection of claims 1-2, 4-9, 11-16, 18-22 and 24-28 under 35 U.S.C. 102(b) is clearly anticipated by Joubert, U.S. Patent No. 4,804,402 is respectfully

traversed. Applicants have cancelled claims 1-2, 4-9, 11-16, 18-22 and 24-28 without prejudice.

The Examiner's rejection of claims 1-2, 5-7 and 28 under 35 U.S.C. 102(b) as being clearly anticipated by Nagji, U.S. Patent No. 5,505,908 is respectfully traversed. Applicants have cancelled claims 1-2, 5-7 and 28 without prejudice.

The Examiner's rejection of claims 1-2, 15-16 and 28 under 35 U.S.C. 102(e) as being clearly anticipated by Goldberg, et al., U.S. Patent No. 6,245,294 is respectfully traversed. Applicants have cancelled claims 1-2, 15-16 and 28 without prejudice.

The Examiner's rejection of claims 15-16 under 35 U.S.C. 102(b) as being clearly anticipated by Gruber, et al., U.S. Patent No. 3,897,210 is respectfully traversed. Applicants have cancelled claims 15-16 without prejudice.

The Examiner's rejection of claims 3, 17, 31-36 and 38-39 under 35 U.S.C. 103(a) as being unpatentable over Joubert as set above is respectfully traversed. Applicant has cancelled claims 3 and 17 without prejudice. Applicant asserts that claims 31-36 and 38-39 are patentable and unobvious over the Joubert reference. Joubert does not teach nor suggest using methyl bromide gas at approximately 80 milligrams per liter for a base line period of 48 hours where the humidity is approximately 21 percent. Under 35 U.S.C. 103, it is imperative that the patent and references cited by the Examiner must teach or suggest to one of ordinary skill in the art, the claimed invention. Clearly, there is no teaching or suggestion in Joubert as described in claims 31-36 and 38-39.

The Examiner's rejection of claims 3, 17, 5-9, 12-13, 18-22, 24-27 and 29-39 as being unpatentable under 35 U.S.C. 103(a) over Goldberg, et al. is respectfully traversed.

Applicant has cancelled claims 3, 17, 5-9, 12-13, 18-22, 24-27 and 29. Goldberg, with respect to claims 30-39 does not teach applicant's specific method as specifically recited in these claims. Claims 33 and 38 have been cancelled by applicant. Claim 30 requires a concentration of methyl bromide gas of 80 mg/liter and base line period of 48 hours. There is no teaching in Goldberg to use applicant's specific quantities of concentration nor time periods. Further, there is no suggestion in the reference.

The Examiner's rejection of claims 1-7, 9-20 and 22-27 under 35 U.S.C. 101 as claiming the same invention is respectfully traversed. Applicants have cancelled claims 1-7, 9-20 and 22-27.

The Examiner's rejection of claims 8, 21 and 28-29 under the judicially created doctrine of obviousness type double patenting is traversed. Applicants have cancelled 8, 21 and 28 and 29. It is applicant's position that claims 30-37 and 39 are patentably distinct from each other and from claims 1-27 of U.S. Patent No. 6,699,433. Specifically, there is no claim of 80 mg/liter and there are no claims to the low humidity of 21 percent now being claimed.

It is believed that claims 30-37 and 39 are allowable over the art of record.

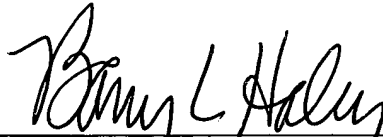
In re application of: WEINBERG, Mark J.

Serial No.: 10/623,428

Page 13

If there are any additional charges, including extension of time, please bill our
Deposit Account No. 13-1130.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry L. Haley", is written over a horizontal line.

Barry L. Haley, Reg. No. 25,339

Malin, Haley & DiMaggio, P.A.

1936 S. Andrews Avenue

Fort Lauderdale, Florida 33316

Telephone: (954) 763-3303

Facsimile: (954) 522-6507